

<b>STATE OF SOUTH CAROLINA</b>	)	<b>BEFORE THE CHIEF PROCUREMENT OFFICER</b>
<b>COUNTY OF RICHLAND</b>	)	
	)	
In the Matter of Protest of:	)	DECISION
	)	
Goaltex, Corporation	)	CASE NO. 2008-116
	)	
Department of Corrections	)	POSTING DATE:
IFB No. 348503-4/23/09-M	)	
Term Contract to Provide 6" High top	)	
<u>Steal Toe Leather Boots</u>	)	JUNE 13, 2007

This matter is before the Chief Procurement Officer (CPO) pursuant to a letter of protest from Goaltex, Corporation (Goaltex). With this invitation for bids (IFB), the South Carolina Department of Corrections (SCDC) attempts to procure a term contract to provide 6" high top steal toe leather boots. In the letter, Goaltex protested SCDC's intent to award to TBP Services, Inc. (TBP) alleging "we do not believe that the current samples submitted by TBP (with their bid) meet the specifications of solicitation # 348503-4/23/08-M namely that they are full grain leather."

In order to resolve the matter, the CPO conducted a hearing June 3, 2008. Appearing before the CPO were TBP, represented by Michelle Novak, Vice President for Marketing and Institutional Sales and SCDC, represented by Caroline Lindsey, Esq. Goaltex did not appear at the hearing.

#### **NATURE OF PROTEST**

The letter of protest is attached and incorporated herein by reference.

#### **FINDINGS OF FACT**

In the IFB, issued March 28, 2008, SCDC specified: "UPPER LEATHER 1.2 MM 1.6." MM Black full grain leather. Full grain leather is an industry term used to denote a certain quality of leather. According to testimony, full grain is determined by factors such as where the leather for the boot was taken from the hide, how the hide was tanned, and other factors. Often, today, other industry terms such as

resurfaced leather, heated leather, stamped with a grain leather, not original leather, or simply leather are used to denote a cheaper quality than full grain leather. Or, grain is not mentioned at all.

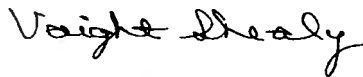
According to Ms. Novak, of TBP, the upper of the sample and bid offered SCDC by TBP "is not full grain leather", as required by the specifications.

### **CONCLUSIONS OF LAW**

Regarding award of an IFB, the Consolidated Procurement Code reads "notice of an intended award of a contract to the **lowest responsive and responsible bidders** whose bid meets the requirements set forth in the invitation for bids shall be given by posting such notice at a location specified in the invitation for bids." (SC Code Section 11-35-1520(10).) (Emphasis added.) The Code defines a responsive bidder as "a person who has submitted a bid or offer which conforms in all material aspects to the invitation for bids or request for proposals." Ms. Novak acknowledged that TBP's bid was not for a "full grain leather" upper, as required by the specifications. Therefore, TBP bid was not responsive to the requirements of the IFB. The regulations read further, "Any bid which fails to conform to the essential requirements of the invitation for bids shall be rejected." (SC Reg. 19-445.2070(A).)

### **DETERMINATION**

For the foregoing reasons, the protest of Goaltex is granted. The award to TBP is vacated.



R. Voight Shealy  
Chief Procurement Officer  
for Supplies and Services

June 13, 2008

Date

Columbia, S.C.

## STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

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Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: [www.procurementlaw.sc.gov](http://www.procurementlaw.sc.gov)

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 66.1 of the 2007 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410(4). . . . Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2007 S.C. Act No. 117, Part IB, § 66.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, a business must retain a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003).

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Chief Procurement Officer  
Materials Management Office  
1201 Main Street  
Suite 600  
Columbia, SC 29201

Re: Solicitation # 348503-4/23/08-M  
Official Notice of Protest

5/5/08

Dear Chief Procurement Officer,

We are formally protesting the intent to award solicitation # 348503-4/23/08-M to TBP Services Inc. And seek action to have TBP Services Inc., disqualified for award and have the next lowest qualified bidder awarded this contract.

On the previous contract for this item issued against Solicitation # 800-347872-4/18/03-G, TBP Services Inc., submitted samples and was awarded a contract to deliver BIG M's Style 713STEHL Steel Toe Workboots. During the term of the contract, TBP Services repeatedly delivered workboots to SCDOC vastly different than the sample submitted and for which their award was based. It is our contention that TBP Services Inc. willfully and repeatedly delivered workboots to SCDOC of inferior and substandard quality which failed to meet the specifications laid out and agreed to by TBP Services Inc., in the contract. Instead of delivering the contracted for item, TBP Services Inc., sought to maximize their profit by delivering inferior goods. Most specifically, TBP Services Inc., failed to provide Full Grain Leather Workboots in accordance with the contract terms. Instead, repeatedly delivering inferior quality workboots constructed of cheaper grades of leather. Furthermore, the workboots delivered by TBP Services Inc., were not of adequate durability. SCDOC in turn incurred damages by having to expend additional funds to replace footwear prematurely.

Furthermore, we do not believe that the current samples submitted by TBP Services Inc., meet the specifications of solicitation # 348503-4/23/08-M namely that they are full grain leather. Based on the current cost of full grain leather workboots, the award price and

TBP Services Inc., past history, we are convinced that the shoes they intend to deliver to the SCDOC do not meet specifications.

It is our belief that the State did not receive the correct quality merchandise contracted for and promised by TBP Services Inc., in their previous award. And do not believe that TBP intends to deliver a full grain leather product now. Furthermore, we do not believe that TBP Services Inc., can provide independent lab results showing that their current sample is constructed of full grain leather. We believe the playing field must be equal for all bidders and do not believe that TBP Services Inc., should be awarded a contract for an inferior product failing to meet specifications.

Sincerely yours,

Robert Grubman  
RG:njk  
Cc:Melissa Mims SCDOC